

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AIJALON WALLACE MCLITTLE, II,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Case No. 05-70841
Criminal Case No. 95-81146-14
Honorable Patrick J. Duggan

ORDER DENYING CERTIFICATE OF APPEALABILITY

At a session of said Court, held in the U.S.
District Courthouse, City of Detroit, County of
Wayne, State of Michigan, on JUNE 1, 2005.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Petitioner Aijalon Wallace McLittle, II is a federal prisoner currently incarcerated at the Federal Correctional Institution in Sheridan, Oregon. On October 28, 1997, Petitioner filed a petition for writ of habeas corpus under 28 U.S.C. § 2255, raising ineffective assistance of counsel, actual innocence, and misapplication of the Sentencing Guidelines. This Court denied Petitioner's § 2255 motion. *McLittle v. United States*, No. 97-75640 (E.D. Mich. June 30, 1998). On March 4, 2005, Petitioner filed a successive petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, or in the alternative, pursuant to 28 U.S.C. § 2255 challenging his sentence. In an Opinion and Order dated April 12, 2005, this Court denied Petitioner's writ pursuant to § 2255 because Petitioner failed to obtain permission

from the court of appeals to file a successive petition. The Court also denied Petitioner's writ pursuant to § 2241 because the petition was not properly filed in the court having jurisdiction over the prisoner's custodian.

On March 18, 2005, Petitioner filed a Motion for Release Pending Appeal alleging that he is actually innocent. Because this Court found that it could not reach the merits of Petitioner's writ of habeas corpus pursuant to § 2255 and § 2241, this Court denied Petitioner's Motion for Release Pending Appeal in an Opinion and Order dated May 4, 2005.

On May 26, 2005, Petitioner filed a motion seeking a certificate of appealability. For the reasons set forth below, the petition shall be denied.

In general, 28 U.S.C. § 2253 governs appeals of habeas corpus proceedings. Section 2253(a) provides that "[i]n a habeas corpus proceeding . . . before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held." However, unless a certificate of appealability is issued, an appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding.

"A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see also Lyons v. Ohio Adult Parole Auth.*, 105 F.3d 1063, 1073 (6th Cir. 1997). "Where a district court has rejected a petitioner's constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 120 S. Ct. 1595, 1604 (2000). However, when a petition is denied on procedural grounds, a somewhat different standard applies. In such

cases, a certificate of appealability shall issue only “when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right *and* that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* (emphasis added).

As the Court does not believe that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and whether the Court’s procedural ruling was correct, the Court shall deny the request for a certificate of appealability.

Accordingly,

IT IS ORDERED that Petitioner’s motion for a certificate of appealability is **DENIED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:
Aijalon W. McLittle, II
Register No. 21050-039
FCI Sheridan
P.O. Box 5000
Sheridan, OR 97378-5000

William J. Sauget, AUSA